

Chesapeake Bay Preservation Act Amendments - Stakeholder Meeting Process

Summary Notes from Fifth Stakeholders Meeting 12-7-10

Tuesday, December 7, 2010, 6:30 p.m. – 9:30 p.m. at Board of Supervisors Meeting Room, Leesburg

- 1. Welcome/Introduction of Participants & County Officials** – Facilitator opened the meeting at 6:30 p.m.
- 2. Agenda Overview** – Facilitator reviewed the agenda, the basic process requirements set by the Board of Supervisors, and the ground rules that were affirmed by the Stakeholder Representatives.
- 3. Brief Recap of Results of First Four Meetings** – Facilitator reviewed highlights of first four meetings, noting that the stakeholders had:
 - established protocols and meeting schedule
 - reviewed issues and established priorities
 - resolved several minor issues
 - resolved the first major issue (RPA map)
- 4. Continue Review Issues Matrix** – Stakeholders continued reviewing the Issues identified earlier.

Buffer Width/Exemptions/Waivers

Stakeholders continued review of the buffer width issue, focusing on the choice between a 100-foot buffer with clear exemptions, or a 35-foot buffer with limited exemptions (those two choices gained a roughly even split of support among stakeholders at the previous meeting).

Based on discussion at the previous meeting, the facilitator noted that a simple principle seemed to emerge:

For natural resource protection, the bigger the buffer, the better.

For landowner/homeowner protection, the smaller the buffer, the better.

Therefore, where is the proper balance between these two values?

100-foot Buffer Discussion:

Stakeholders began with consideration of the 100-foot buffer, and identified the various problems or impositions that such a buffer might cause to landowners and homeowners.

Comments from individual stakeholders about the **impact** of a 100-foot buffer were:

- 1. House lots and HOA lands.** Would impact on suburban/HOA common lands and small lots – it would limit the use or disturbance and would require replacement of vegetations which would cost homeowners money. Administrative waivers hardship determinations

were mentioned as ways to help protect the homeowner – concerns expressed included the process cost (time and money) and the uncertainty of whether a waiver would be granted.

Most of or the entire lot would be a no disturb area. *[Note that County staff had previously provided the percentage of individual lots affected in the November 16, 2010 Meeting Summary. Of 8,515 parcels with RPA, 361 (4%) have greater than 75% RPA.]*

Concern was expressed regarding the need to obtain permission from the County to remove dead trees. *[Note that Section 1222.14(d)iii of the CBPO allows for the removal of dead trees without approval from the County.]*

2. **Agriculture.** Would interfere with agricultural activities. Would affect fewer people but more land. Would greatly impact livestock operations. Would affect implementation of Best Management Practices (BMPS) by requiring a 100-foot buffer (one stakeholder clarified that a 25-foot agricultural buffer is permitted in the current draft ordinance amendments with the implementation of BMPs).
3. **Infrastructure encroachments.** Would cause problems with infrastructure – various intrusions must occur within a 100-foot buffer, including roads, sewer lines, etc. One stakeholder noted that these items are identified as exemptions within the RPA in the current draft ordinance amendments.
4. **Density.** Concern was expressed that the buffer could affect the allowable density on properties. *[Note that Section 1222.07(b) of the current draft ordinance amendments provide that the land area within the RPA may be included in the land area for density calculations.]*
5. **Uncertainty.** “100 feet” would become the “minimum” and the County would ask for even greater buffers during the development review process.
6. **Tax Revenues.** Would negatively affect County tax revenues by taking land out of production, diminishing property values and taking away development potential.
7. **Redevelopment.** Would inhibit redevelopment within the RPA. *[Note that the current draft ordinance amendments authorize redevelopment in the RPA.]*
8. **Designed for Tidal Areas.** It’s a “one size fits” all standard that was originally designed for tidal areas.
9. **Administrative Burden.** Would cause an administrative burden on County staff to enforce.

After completing the list of impacts of the 100-foot buffer on landowners, the stakeholders began to examine each impact to identify possible ways to reasonably mitigate the impacts.

House lots and HOA lands:

Three major methods were identified for mitigating the impact/burden on homeowners:

- Exemptions
- Waivers
- An alternative measure such as a performance standard of some kind.

Discussion points:

- Need to distinguish between “buffer” and “setback”
- Exempt property created or established before adoption of the ordinance [“grandfathering”]
- Exempt approved lots and projects (those that have government approval) [“grandfathering”]
- Exempt areas or lots as of a certain date [“grandfathering”]
- But do not allow a total exemption.
- Exempt smaller lots.
- Require minimum planted buffer.
- Clarify expectation of planting within the buffer
- Allowed engineered solutions as alternative to just distance (100 feet)
- Designate house lots and HOA property as exempt IDA or an equivalent designation
- Exempt areas served by public water and sewer.
- This should be “our” ordinance, not just Chesapeake Bay Ordinance.
- Reduce the buffer.
- The County Attorney was asked about the notion of reducing the buffer and responded that the County has some latitude to do less than called for in the Bay Act but that it can not be arbitrary.
- Towns should be included.

35-foot Buffer Discussion:

Before completing the discussion of the 100-foot buffer, the stakeholders decided to take up the other choice on the table, the 35-foot buffer.

Stakeholders identified the various problems that such a 35-foot buffer might cause:

- 1. Impact of Development on Streams.** Development next to streams impacts the stream; keeping development away from the stream reduces the impact on the stream (recognizing that some stream crossings are necessary for roads, etc.) Therefore, a 35-foot buffer could be eliminated by normal sewer and other infrastructure improvements, thereby actually leaving no buffer at all. A wider buffer is needed to compensate for exemptions.
- 2. Imposition to HOA lands.** 35-feet is still an imposition to the homeowner, mainly to HOAs. After some discussion, staff cited data from Stafford County, Fairfax County and Prince William County that indicated that the assessed value of land within an RPA was not substantially affected unless a significant amount of it was located within the RPA.
- 3. WIP funds.** A 35-foot buffer would need a resource management plan, that includes a Nutrient Management Plan, Soil Conservation Plan, etc., to be consistent with the WIP. This

combination of practices only applies to the agricultural provisions in the WIP. One stakeholder noted that the Bay Act is more permissive than the WIP in regard to agriculture, because a 25-foot buffer is allowed with the implementation of BMPs (e.g. a nutrient management plan), as opposed to a 35-foot buffer with implementation of BMPs.

4. **Forested buffer.** Would a forested buffer be required?
5. **Sediment control and nutrient reduction.** The median width for adequate sediment control and nutrient reduction is 100 feet.
6. **Variation in resource areas.** The data is not consistent between different resource areas - tidewater vs. piedmont, etc.
7. **Balance Needs.** The buffer should be defined for the minimum width and the maximum effectiveness.
8. **Variation in soils, slopes, community values, and associated buffer widths.** Different soil types and slopes would result in different buffer widths, values and priorities regarding water quality impacts also necessitate different buffer widths.
9. **Buffer vs. Floodplain.** A 35-foot buffer doesn't always cover the width of the floodplain. Doesn't help protect our water quality.

One stakeholder suggested a 10-foot buffer width based upon an EPA study that indicated that such a buffer would remove 50% of all contaminants.

A proposition was offered to determine the group's preference on buffer width. Several combinations of choices for buffer width options were offered. Stakeholders then took a measure of consent for considering each choice. (24 voting stakeholders were at the table):

1. 100 feet or 35 feet, point by point (8 in favor)
2. 100 feet or 35 feet, up or down (0 in favor)
3. 100 feet or 35 feet or 10 feet (16 in favor)

The stakeholders then assessed their support for 100, 35 or 10 foot buffers:

1. 100 feet with clear exemptions identified (5 in favor)
2. 35 feet with limited exemptions identified (17 in favor)
3. 10 feet with limited exemptions identified (10 in favor) *[Note that several people voted again for this option, thus invalidating it, but #2 remained the overall preference, nonetheless.]*

Note that the REDC representative abstained from the vote.

5. Review Results of Meeting and Next Steps

The stakeholders revisited the meeting schedule. A proposition was offered to meet on the second Tuesday of the month during December, January and February, and report to the Board

of Supervisors in March. Several alternatives were discussed, including finishing in January, and meeting on December 9, 14, and 16. The stakeholders considered various factors, including the original assignment from the Board of Supervisors, as well as the Board's winter meeting schedule. None of the proposed alternatives received sufficient support to carry forward, so stakeholders settled on their original meeting schedule of December 9 and 14, and in addition, to meet with representatives from the state to discuss the WIP, at 5:00 pm on December 14, prior to the final stakeholders meeting at 6:30 pm.

6. Adjourn – Facilitator adjourned the meeting at 9:45 pm.

Note Schedule of remaining meetings:

Thursday, December 9 - 6:30 p.m. to 9:30 p.m. - BOS meeting room

Tuesday, December 14 - 6:30 p.m. to 9:30 p.m. - BOS meeting room

(Note that the WIP will be discussed with state representatives at 5:00 pm on December 14).